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08 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
09 AT SEATTLE

10 RICKY A. BEAVER, ) Case No. C05-1938-MJP-JPD  
11 Plaintiff, )  
12 v. ) ORDER APPOINTING COUNSEL  
13 CITY OF FEDERAL WAY, et al., ) PURSUANT TO 28 U.S.C. § 1915  
14 Defendants. )

15 Plaintiff is proceeding *pro se* and *in forma pauperis* (“IFP”) in this 42 U.S.C. § 1983  
16 civil rights action against the City of Federal Way and two officers of the Federal Way Police  
17 Department. This matter comes before the Court *sua sponte* upon reference by the Honorable  
18 Marsha J. Pechman. Dkt. No. 42. After careful consideration of the governing law and  
19 balance of the record, the Court ORDERS that counsel be appointed for plaintiff in this case.

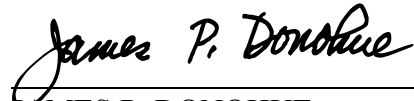
20 No constitutional right to counsel exists for an indigent plaintiff in a civil case unless  
21 the plaintiff may lose his physical liberty if he loses the litigation. *See Lassiter v. Dept. of*  
22 *Social Servs.*, 452 U.S. 18, 25 (1981). However, pursuant to 28 U.S.C. § 1915(e)(1), the  
23 Court has the discretion to appoint counsel for indigent litigants who are proceeding IFP.  
24 *United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995). The Court  
25 will appoint counsel only under “exceptional circumstances.” *Id.*; *Wilborn v. Escalderon*, 789  
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01 F.2d 1328, 1331 (9th Cir. 1986). "A finding of exceptional circumstances requires an  
02 evaluation of both the likelihood of success on the merits and the ability of the plaintiff to  
03 articulate his claims *pro se* in light of the complexity of the legal issues involved." *Wilborn*,  
04 789 F.2d at 1331 (internal quotations omitted). These factors must be viewed together before  
05 reaching a decision on a request for counsel under § 1915(e)(1). *Id.*

06 Because plaintiff has prevailed against Officers Doug Laird and Heather Castro at the  
07 summary adjudication stage, *see* Dkt. No. 41, appointment of counsel is appropriate.

08 The Clerk is directed to appoint counsel and to send a copy of this Order to plaintiff,  
09 counsel for defendants, and the Honorable Marsha J. Pechman. In light of this Order, the  
10 deadline for the Joint Pretrial Statement is STRICKEN and will be reset by the Court after  
11 counsel has been appointed.

12 DATED this 29th day of November, 2006.

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14 JAMES P. DONOHUE  
15 United States Magistrate Judge  
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